SUPREME COURT OF THE UNITED STATES.

No. 90.

BENJAMIN G. SIMS, PLAINTIFF IN ERROR,

vs.

THOMAS HUNDLEY.

IN ERROR TO THE CIRCUIT COURT U. S., SOUTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S. Gideon, printers.

THOMAS HUNDLEY,
vs.
BENJAMIN G. SIMS.

Pleas before the honorable George Adams, judge of the circuit court of the United States, in and for the ninth circuit and district of Mississippi, at a court held at Jackson, at the May term, in the year of our Lord one thousand eight hundred and thirty-eight.

Be it remembered that heretofore, to wit, on the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and thirty-eight, came Thomas Hundley, by Rives, Hughes and Martin, his attorneys, into the clerk's office of the court aforesaid, and sued out the following writ of summons ad respondendum, against Benjamin G. Sims, to wit:

UNITED STATES OF AMERICA, *district of Mississippi, ss.*

The President of the United States to the marshal of the Mississippi district, greeting:

We command you, without delay, to summon Benjamin G. Sims, a citizen of the State of Mississippi, that he be and appear before the circuit court of the United States, to be held at the town of Jackson, in and for the district of Mississippi, on the first Monday of May next, to answer to Thomas Hundley, a citizen of the State of Virginia, of a plea of trespass on the case to his damage fifty thousand dollars, and that he do file his plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against him by default, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 25th day of April,
[L. S.] A. D. 1838, and of the independence of the United States the 62d.

WM. BURNS, *Cl'k.*

Marshal's return.

Executed 25th April, 1838.

WM. M. GWIN, *Mar'l.*
By T. F. POINDEXTER, *D. M.*

And on the said 25th day of April, in the year 1838, the plaintiff, by his attorneys aforesaid, filed his declaration herein, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *district of Mississippi.*

Circuit court—May term, 1838.

Thomas Hundley, a citizen of the State of Virginia, plaintiff, by attorney, complains of Benjamin G .Sims, a citizen of the State

of Mississippi, defendant, in custody, &c., of a plea of trespass on the case upon promises. For that a certain H. N. Spencer, heretofore, to wit, on the second day of May, in the year of our Lord eighteen hundred and thirty-five, at Port Gibson, to wit, in said district of Mississippi, made his certain promissory note in writing of that date, and thereby then and there promised to pay on the fifteenth day of February, (meaning February, eighteen hundred and thirty-seven) to the order of Passmore Hoopes, by the name and description of Passmore Hoopes, four thousand dollars, for value received, negotiable and payable at the office of the Planters' Bank (meaning at the office of the Planters' Bank of the State of Mississippi,) at Port Gibson, and then and there delivered said note to said Hoopes, who then and there, before the payment of said sum of money, or any part thereof, in writing, endorsed and delivered said note so endorsed to said defendant, who then and *there* by the name and signature of Benjamin G. Sims, in writing, endorsed, and delivered said note so endorsed to said plaintiff; and said plaintiff in fact saith, that afterwards, when said note became due and payable, according to its tenor and effect, to wit, on the eighteenth day of February, eighteen hundred and thirty-seven, at the said office of the Planters' Bank of the State of Mississippi, at Port Gibson, the said promissory note, so endorsed as aforesaid, was then and there duly presented and shown for payment, and payment of the sum of money therein specified then and there demanded of the teller of said bank, but that neither was payment there made, nor did or would said Spencer, nor said Hoopes, nor said Sims, nor any or either of them, nor any other person or persons, when said note was so presented and shown for payment, and payment of the sum of money therein specified demanded as aforesaid, or at any other time or place, pay the said sum of money, or any part thereof, but therein made wholly default; of all which said several premises said defendant afterwards had notice, to wit, on the day and year last aforesaid, at to wit, in said district of Mississippi, by means whereof, and by force of the statute in such case made and provided, said defendant then and there became liable to pay said plaintiff said sum of money in said note specified, whenever he should be thereto afterwards requested; and being so liable, said defendant in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at to wit, in said district of Mississippi, undertook, and then and there faithfully promised said plaintiff, to pay him the said sum of money in said note specified, whenever he should be thereto afterwards requested by him.

And for this, that the aforesaid H. N. Spencer, at another time, to wit, on the second day of May, in the year of our Lord eighteen hundred and thirty-five, at Port Gibson, to wit, in said district of Mississippi, made his certain other promissory note in writing of that date, and thereby then and there promised to pay, twelve months after the 15th February, 1836, (the fifteenth day of Febru-

ary, eighteen hundred and thirty-six) without defalcation, to the order of the said Passmore Hoopes, five thousand one hundred and sixty-nine dollars, value received, negotiable and payable at the office of the Planters' Bank, (meaning at the office of the Planters' Bank of the State of Mississippi) at Port Gibson, and then and there delivered said note to said Hoopes, who then and there, before the payment of said sum of money, or any part thereof, in writing, endorsed, and delivered said note so endorsed to said defendant, who then and there, by the name and signature of Benj. G. Sims, in writing, endorsed, and delivered said note so endorsed to said plaintiff, and said plaintiff in fact saith, that afterwards, when said note became due and payable, according to its tenor and effect, to wit, on the eighteenth day of February, eighteen hundred and thirty-seven, at the said office of the Planters' Bank, of the State of Mississippi, at Port Gibson, the said promissory note, so endorsed as aforesaid, was then and there duly presented and shown for payment, and payment of the sum of money therein specified then and there demanded of the teller of said bank; but that neither was payment there made, nor did or would said Spencer, nor said Hoopes, nor said Sims, nor any or either of them, nor any other person or persons, when the said note was so presented and shown for payment, and payment of the sum of money therein specified demanded as aforesaid, or at any other time or place, pay the said sum of money, or any part thereof, but therein wholly made default; of all which several premises said defendant afterwards had notice, to wit, on the day and year last aforesaid at to wit, in the said district of Mississippi; by means whereof, and by force of the statute in such case made and provided, said defendant then and there became liable to pay said plaintiff said sum of money in said note specified, whenever he should be thereto afterwards requested; and being so liable said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at to wit, in the said district of Mississippi, undertook, and then and there faithfully promised said plaintiff, to pay him said sum of money in said note last aforesaid specified, whenever he should be thereto afterwards requested by him.

And for this, also, that the said H. N. Spencer, at another time, to wit, on the second day of May, in the year of our Lord eighteen hundred and thirty-five, at Port Gibson, to wit, in the district of Mississippi aforesaid, made other his certain promissory note in writing of that date, and thereby then and there promised to pay, on the fifteenth day of February, eighteen hundred and thirty-eight, to the order of said Passmore Hoopes, four thousand dollars, value received, negotiable and payable at the office of the Planters' Bank, (meaning at the office of the Planters' Bank of the State of Mississippi,) at Port Gibson, and then and there delivered said note to said Hoopes, who then and there, before the payment of said sum of money, or any part thereof, in writing, endorsed and delivered

said note so endorsed to said defendant, who then and there, by the name and signature of Benjamin G. Sims, in writing, endorsed, and delivered said note so endorsed to said plaintiff; and said plaintiff in fact saith, that afterwards, when said note became due and payable, according to its tenor and effect, to wit, on the seventeenth day of February, eighteen hundred and thirty-eight, at the said office of the Planters' Bank of the State of Mississippi, at Port Gibson, the said promissory note, so endorsed as aforesaid, was then and there duly presented and shown for payment, and payment of the sum of money therein specified then and there demanded of the teller of said bank; but that neither was payment there made, nor did or would said Spencer, nor said Hoopes, nor said Sims, nor any or either of them, nor any other person or persons, when said note was so presented and shown for payment, and payment of the sum of money therein specified demanded as aforesaid, or at any other time or place, pay said sum of money or any part thereof, but therein wholly made default; of all which several premises said defendant afterwards had notice, to wit, on the day and year last aforesaid at , to wit, in the district of Mississippi aforesaid, by means wherrof, and by force of the statute in such case made and provided, said defendant then and there became liable to pay said plaintiff said sum of money in said last mentioned promissory note specified, whenever he should be thereto afterwards requested. And being so liable, said defendant in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at , to wit, in the district of Mississippi aforesaid, undertook, and then and there faithfully promised said plaintiff to him said sum of money in said note specified, whenever he should be thereto afterwards requested by him.

And for this moreover, that said H. N. Spencer, at another time, to wit, on the second day of May, in the year of our Lord eighteen hundred and thirty-five, at Port Gibson, to wit, in the district of Mississippi, made his certain other promissory note, in writing, of that date, and thereby then and there promised to pay, twelve months after the fifteenth February, 1837, (meaning after the fifteenth day of February, eighteen hundred and thirty-seven,) to the order of the aforesaid Passmore Hoopes, five thousand one hundred sixty-nine dollars, value received, negotiable and payable at the office of the Planters' Bank (meaning at the office of the Planters' Bank of the State of Mississippi,) at Port Gibson, and then and there delivered said note to said Hoopes, who then and there, before the payment of said sum of money, or any part thereof, in writing, endorsed, and delivered said note so endorsed to said defendant, who then and there, by the name and signature of Benj. G. Sims, in writing, endorsed, and delivered said note so endorsed to said plaintiff; and said plaintiff in fact saith, that afterwards, when the said note became due and payable, according to its tenor and effect, to wit, on the seventeenth day of February, eighteen hundred and

thirty-eight, at the said office of the Planters' Bank of the State of Mississippi, at Port Gibson, the said promissory note so endorsed as aforesaid was then and there duly presented and shown for payment, and payment of the sum of money therein specified then and there demanded of the teller of said bank, but that neither was payment then made, nor did or would said Spencer, nor said Hoopes, nor said Sims, nor any or either of them, nor any other person or persons, when said note was so presented and shown for payment, and payment of the sum of money therein specified demanded as aforesaid, or at any other time or place, pay said sum of money, or any part thereof, but therein wholly made default; of all which several premises said defendant afterwards had notice, to wit, on the day and year last aforesaid, at , to wit, in the district of Mississippi aforesaid; by means whereof, and by force of the statute in such case made and provided, said defendant then and there became liable to pay said plaintiff said sum of money in said note last aforesaid specified, whenever he should be thereto afterwards requested, and being so liable, said defendant in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at , to wit, in the district of Mississippi aforesaid, undertook, and then and there faithfully promised said plaintiff, to pay him said sum of money in the said promissory note specified, whenever he should be thereto afterwards requested by him.

And moreover for this, to wit, that said defendant Sims, by the name and signature of Benj. G. Sims, heretofore, to wit, on the fourteenth day of December, in the year of our Lord eighteen hundred and thirty-five, at Clinton, to wit, in the district of Mississippi aforesaid, made his certain promissory note in writing, of that date, and thereby then and there promised to pay, on the first day of January, eighteen hundred and thirty-eight, said plaintiff three thousand nine hundred and seven dollars and seventeen cents, for value received, and then and there delivered said note to said plaintiff; by means whereof, said defendant then and there became liable to *paid* said plaintiff said sum of money in said note specified, according to the tenor and effect of said note, and being so liable said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Clinton, to *to* wit, in said district, undertook, and then and there faithfully promised said plaintiff, to pay him said sum of money in said note specified, according to the tenor and effect thereof.

And yet also for this, that said defendant, at another time, to wit, on the seventeenth day of February, eighteen hundred and thirty-eight, at to wit, in said district, was indebted to said plaintiff in other the sum of thirty thousand dollars, for so much money before that time lent, and advanced, and paid, laid out and expended, by said plaintiff, to and for the use of said defendant, and at his request, and in the further sum of thirty thousand dollars, for so much other money before that time had and received

by said defendant, to and for the use of said plaintiff, and in arrear; and being so indebted, said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at , to wit, in said district, undertook, and then and there faithfully promised said plaintiff, to pay him said sums of money in this count mentioned, whenever he should be thereto afterwards requested by him.

Nevertheless said defendant, disregarding his said promises, &c., hath not, although thereto often afterwards requested, paid said plaintiff said several sums of money, or any or either of them, or any part thereof; but the same to pay him, the said plaintiff, said defendant hath hitherto altogether neglected and refused, and yet doth wholly neglect and refuse, to the damage of said plaintiff of fifty thousand dollars; and therefore he brings his suit, &c.

RIVES & HUGHES, *Pl'ffs att'y.*

Copy of note.

$4,000. PORT GIBSON, *2d May*, 1835.

On the fifteenth day of February, eighteen hundred and thirty-seven, I promise to pay, to the order of Passmore Hoopes, four thousand dollars, value received, negotiable and payable at the office of the Planters' Bank, at Port Gibson.

H. N. SPENCER.

Endorsed: Passmore Hoopes, Benj. G. Sims.

$5,169. PORT GIBSON, *May 2d*, 1835.

Twelve months after the fifteenth February, 1836, I promise to pay, without defalcation, to the order of Passmore Hoopes, five thousand one hundred sixty-nine dollars, value received, negotiable and payable at the office of the Planters' Bank, at Port Gibson.

H. N. SPENCER.

Endorsed: Passmore Hoopes, Benj. G. Sims.

$4,000. PORT GIBSON, *2d May*, 1835.

On the fifteenth day of February, eighteen hundred and thirty-eight, I promise to pay to the order of Passmore Hoopes, four thousand dollars, value received, negotiable and payable at the office of the Planters' Bank, at Port Gibson.

H. N. SPENCER.

Endorsed: Passmore Hoopes, Benj. G. Sims.

$. PORT GIBSON, *May 2*, 1835.

Twelve months after the 15th February, 1837, I promise to pay, without defalcation, to the order of Passmore Hoopes, five thousand one hundred sixty-nine dollars, value received, negotiable and payable at the office of the Planters' Bank, at Port Gibson.

H. N. SPENCER.

Endorsed: Passmore Hoopes, Benj. G. Sims.

$3,907 17. CLINTON, *December 14th*, 1835.

On the first day of January, eighteen hundred and thirty-eight, I promise to pay Thomas Hundley three thousand nine hundred and seven dollars and seventeen cents, for value received.

BENJ. G. SIMS.

Plea.

And the said Benjamin G. Sims, by his attorneys, comes and defends the wrong and injury, when, &c.; and says, that he did not undertake and promise, in manner and form as the said Thomas Hundley in his declaration hath complained against him, and of this he puts himself upon the country.

FOOTE & PARHAM,
Att'y for Deft's.

And plaintiff doth the like.

RIVES & HUGHES, *for Pl'ffs.*

And for further plea in this behalf, the said Benjamin G. Sims says, that the said Thomas Hundley ought not to have and maintain his aforesaid action thereof against him, because he says, that shortly before the fifth day of December, in the year 1835, and long subsequent to the first day of May, 1833, the said Thomas Hundley had brought into the State of Mississippi, as merchandise, a large number of slaves, to wit, forty-five slaves, consisting of men, women, and children; and that before, and on said fifth day of December, in the year 1835 aforesaid, such negotiation and agreement had taken place between the said Thomas Hundley and the said Benjamin G. Sims, that said Benjamin G. Sims became the purchaser of the said slaves of and from the said Thomas Hundley, in the county of Hinds and State of Mississippi aforesaid, at and for a large sum of money, to wit, the sum of sixty thousand dollars; and that one of the said notes, upon which the said Thomas Hundley hath declared against the said Benjamin G. Sims, was made by him and delivered to the said Thomas Hundley in part payment of the purchase-money of said 45 slaves; and that the other four notes, made by H. N. Spencer, and endorsed by Passmore Hoopes and the said Benjamin G. Sims, and upon which also the said Thomas Hundley hath declared against the said Benjamin G. Sims, was endorsed and delivered by the said Benjamin G. Sims to the said Thomas Hundley, in further part payment of the purchase-money of the said forty-five slaves, and for no other consideration whatever; and the said Benjamin G. Sims further avers, that the consideration of the notes before mentioned is illegal and void, as being against and in contravention of the prohibition contained in the second section of the seventh article of the constitution of the State of Mississippi, under the title "slaves," which said section is in these words, to wit: The introduction of slaves into this State as merchandise, or for sale, shall be prohibited from

and after the first day of May, eighteen hundred and thirty-three, provided that the actual setler or setlers shall not be prohibited from purchasing slaves in any State in this Union, and bringing them into this, for their own individual use, until the year eighteen hundred and forty-five; and the said Benjamin G. Sims avers that the said Thomas Hundley did not introduce the said slaves into the State of Mississippi aforesaid for his own individual use, and this he is ready to verify; wherefore he prays judgment if the said Thomas Hundley ought to have and maintain his action aforesaid against him.

FOOTE & PARHAM,
Att'y for Deft.

And the plaintiff says, *precludi non*, by reason of any thing in the defendant's plea by him secondly pleaded, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to *very;* wherefore, he prays judgment, &c.

RIVES & HUGHES, *for Plaintiff.*

The said defendant, by his attorney, comes and says, that the matters by him alledged, in manner and form as the same are above stated and set forth, are sufficient in law for him, the said defendant, to have and maintain his said plea and the matters and things therein contained; all which he is ready to verify and prove as the court shall direct, &c.; and because the said plaintiff hath made no proper answer to said plea, the said defendant prays judgment of the court, &c.

FOOTE & PARHAM.

And afterwards, to wit, at the said May term of the court aforesaid, to wit, on the fourteenth day of June, in the year of our Lord one thousand eight hundred and thirty-eight, came the parties, by their attorneys, and all and singular the premises being seen and considered, the court doth sustain the demurrer to the second plea in this cause; and thereupon came a jury, to wit: W. G. Parker, Husiah Ginn, Joseph Stephens, A. Morgan, S. Judd, R. Woodson J. J. Maginson, L. S. Evans, J. H. Learned, G. W. Bradley, A. E. Smoot, and C. E. Pickett, who being empannelled, tried, and sworn the truth to speak upon the issue joined, upon their oaths do say, that the said defendant did undertake and promise in manner and form as the said plaintiff in his declaration against him hath complained, and they do assess the plaintiff's damage, by reason thereof, to nineteen thousand three hundred and twenty dollars.

Therefore it is considered by the court that the plaintiff recover against the said defendant nineteen thousand three hundred and twenty dollars, his damage assessed by the jury aforesaid, and his

costs by him about his suit in this behalf expended. And the said defendant in mercy, &c.

Bill of exceptions.

Be it remembered, that when this cause was called for trial, and after the demurrer of the plaintiff to the defendant's second plea had been sustained, the defendant moved for a continuance of the cause, and supported the application by the following affidavit, to wit:

In this case the defendant Benjamin G. Sims makes oath, that Edward Pickett, of Clinton, in Hines county, in said State, is a material witness for him on the trial of this cause; that said Pickett has been summoned, but is not in attendance; that he is not absent by consent or procurement of this defendant; that he is practicing physician, and affiant is informed, and believes, that his services are constantly required to one or two patients whose condition is considered critical; that there is no other person present known to defendant by whom he can prove the same facts he can prove by said Pickett. He expects to prove by said Pickett, that the notes sued on in this case were given, with others, in consideration of the purchase of 45 slaves of the plaintiff at and for the sum of upwards of $60,000—about twenty thousand dollars whereof have been paid—about $16,000 by defendant, and near $4,000 by H. N. Spencer, as hereinafter stated. That some of said negroes were unsound and worthless; that Milley had a disease of the womb, which so affected her general health as to render her unable to labour; that she had also a wen on the throat, which, in all probability, will ultimately occasion her death. That Bannister was laboring under the scrofula, under which he suffered a precarious and comparatively worthless existence. These two slaves are still living. About fifteen or sixteen of the residue of said lot of slaves have since died, and as said Pickett attended the plantation of the defendant in his professional capacity, during the year 1836, when they died, he expects to prove by him, further, that some of them laboured under disease at the time of the purchase, and that from the indications of the disease it must have been known in all probability to the plaintiff. He expects to prove, further, by said Pickett, and one Hundley, the brother of the plaintiff, who resides in Amherst county, Virginia, that said negroes were purchased by the plaintiff in Virginia, in the year 1834 or 1835, for the purpose of being brought into this State for sale; that said Pickett knows said fact, as affiant believes, from conversations with said plaintiff about the time of the purchase; that said negroes were purchased in part by the said Hundley; that since the service of the writ in this case, he has not had time to take said Hundley's deposition; that he knows of no other person by whom he can prove the same facts. That he expects to prove by Horatio N. Spencer, of Port Gibson, in Claiborne county, said State, that he has paid to said plaintiff, as maker of the notes sued

on, near four thousand dollars on two of them; that said Spencer has been summoned, but does not attend; that he is not absent by consent or procurement of defendant, and that there is no person present known to defendant by whom he can prove said payment. That he expects to have the benefit of the testimony of said witness at the next term of this court. That this application is not made for delay, but to aid a legal offence.

B. G. SIMS.

Sworn to and subscribed before me in open court, June 12th, 1838.

G. W. MILLER, *D. clerk.*

Which being heard, and the counsel for the plaintiff agreeing to admit credits to the amount of $, the court decided that such admission destroyed that ground of continuance, and ruled that the cause should proceed to trial, notwithstanding the credit endorsed on one of the notes was in these words: Received a bill drawn of N. & E. Ford & Co., by B. G. Sims, at three months, for $1,500, dated 7th February, 1837, to pass a credit on this note for $1,470 04, this 18th day of February, 1837, and made part of the credit allowed. Said sum appeared to have been paid by the defendant, and not by said Spencer; to which decision the defendant, by attorney, excepts.

The defendant then produced the following record of a protest of the said note for $5,169, which said record is in the words and figures following, to wit:

STATE OF MISSISSIPPI, *Claiborne county, ss:*

I, William M. Randolph, notary public, branch Planters' Bank, Port Gibson, duly commissioned and qualified according to law, and residing in said town, do hereby certify, that on the eighteenth day of February, 1837, I went to the branch Planters' Bank at Port Gibson, and then and there presented for payment the original note, of which the following is a true copy:

$5,169. PORT GIBSON, *May 2d*, 1842.

Twelve months after the 15th February, 1836, I promise to pay, without defalcation, to the order of Passmore Hoopes, five thousand one hundred and sixty-nine dollars, value received, negotiable and payable at the office of the Planters' Bank at Port Gibson.

H. N. SPENCER.

Endorsed.—PASSMORE HOOPES,
BENJ. G. SIMS,
THOS. HUNDLEY.

And I then and there demanded payment of the said note, according to the tenor and effect, and was answered by the teller of the said bank, that the said note would not be paid, and that no funds were deposited in said bank for that purpose; and the said note was not

paid by any person, when payment thereof was demanded as aforesaid. Whereupon, I protested said note for non-payment, and notified the parties thereto of said demand, non-payment, and protest, and that the holder of said note looked to them for payment thereof, which notices were given at the time and in the manner following, to wit: (Copies annexed.)

For Passmore Hopes, written notice of the above tenor was handed to him at his store in Port Gibson.

For Benjamin G. Sims, a written notice of the same tenor was put in the post office at Port Gibson, on the same day, directed to him at Clinton, Mi. Which facts, then and there noted by me on my official record, constitute, as herein set forth, a full and true record of all that was done by me in the premises.

[L. S.] In testimony whereof, I have hereunto set my hand and affixed my official seal, this 1st day of June, 1838.

WM. M. RANDOLPH, *Notary public.*

STATE OF MISSISSIPPI, *Claiborne county:*

Personally appeared before the undersigned, justice of the peace for said county, the above named Wm. M. Randolph, who made oath, that the foregoing record and certificate contain the truth, to the best of his knowledge and belief.

WM. M. RANDOLPH.

Sworn to before me, this 1st day of June, 1838.

LEWIS CRONLY, *J. P.* [SEAL.]

Notices.

PORT GIBSON, 18*th February*, 1837.

BENJ. G. SIMS:

Please to take notice, that a note drawn by N. Spencer, in favour of Passmore Hoopes, for the sum of $5,169, and dated 2d day of May, 1835, was this day protested by me for non-payment, and that the holder looks to you for payment as endorser thereof.

Respectfully, WM. M. RANDOLPH,
Notary public.

PORT GIBSON, 18*th February*, 1837.

P. HOOPES:

Please to take notice, that a note drawn by H. N. Spencer in your favor for the sum of $5,169, and dated the 2d day of May, 1835, was this day protested by me for non-payment, and that the holder looks to you for payment as endorser thereof.

Respectfully,
WM. M. RANDOLPH, *No. Pub.*

To the introduction of which the defendant, by his attorney, objected, which objection the court overruled, and adjudged the said record sufficient; to which opinion the defendant, by his at-

torney, excepts; and thereupon the other records of protest on said notes of Spencer, endorsed by defendant, were produced and read, and the same being identical in substance with the *proceeding*, it is agreed said exception shall apply to them also; the plaintiff then read said records, proved that said notes were protested on the proper day, and the notices directed to the proper place, and rested his case.

The defendant then offered to prove all the facts stated in his said second plea, but the court refused to hear the proof; to which refusal the defendant excepts. The defendant then produced a witness, who proved that the plaintiff in this cause had been known to him about four years last past, during all which time he had resided in (this) Hinds county, Mississippi, and that he had considered, and did then consider, him a resident citizen of the State of Mississippi; and the defendant was proceeding to call another witness, Mr. Cook, deputy marshal, further to prove the same facts, when the testimony was objected to by the attorney of the plaintiff upon the ground that it could not be heard under the issue now on trial; which objection the court sustained, and excluded all testimony as to proof of plaintiff's citizenship; to which decision of the court, ruling out said proof that the plaintiff was a citizen of the State of Mississippi, under said plea of non-assumpsit, the defendant, by attorney, excepts; and thereupon the jury returned a verdict for the plaintiff; and said exceptions being found conformable to the facts, and the agreement of the parties are signed, sealed, and ordered to be made of record in the cause.

GEORGE ADAMS, [L. S.]
Judge of the U. S. for D. Miss.

And afterwards, at a subsequent day of said term, the defendant, by attorney, moved the court for a new trial upon these grounds, to wit:

1st. The court erred in sustaining plaintiff's demurrer to second plea.

2d. The court erred in refusing the defendant a continuance upon the grounds stated in his affidavit, inasmuch as $1,470 04 cents of the credits allowed by plaintiff had been paid by Sims, the defendant, as appeared by the endorsement of the credit for that sum on the note for $5,169.

3d. The court erred in admitting the records and certificates concerning the protest and notice on said endorsed notes.

4th. The court erred in refusing proof on the trial of the facts stated in said second plea.

5th. The court erred in refusing to hear proof, under the plea of non-assumpsit, that the plaintiff was a citizen of the State of Mississippi, which motion for a new trial the court overruled; to which opinion of the court, overruling said motion upon said grounds, the defendant, by attorney, excepts, and prays that this his bill of ex-

ceptions may be signed, sealed, and made of record in the cause, which is done accordingly.

GEO. ADAMS, [L. S.]
Judge U. S. for the dist. of Missi.

UNITED STATES OF AMERICA,
Southern district of Mississippi :
Circuit court, U. S.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing sixteen pages contain a full, true, and complete transcript of the record of the judgment in the case therein named, as the same now remains of record in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court at Jackson, this 15th day of November, A. D. 1843.
[L. S.]

W. H. BROWN, *Clk.*
Per C. H. ROGERS, *D. C.*

UNITED STATES OF AMERICA, *ss :*

To Thomas Hundley, or Rives and Hughes, his attorneys of record, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the second Monday in January next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the ninth circuit, and district of Mississippi, wherein Benjamin G. Sims [is] plaintiff, and you are defendant in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States for the southern district of Mississippi, this 16th day of December, in the year of our Lord one thousand eight hundred and forty-three, and in the 68th year of the independence of the United States.

S. J. GHOLSON.

Not executed as to Thomas Hundley, but executed personally on Robert Hughes, (who did not require a copy,) one of his attorneys of record.

ANDERSON MILLER, *Marshal.*
By GEO. B. ADAMS, *Deputy.*

Dec. 16*th*, 1843.

Marshal's fees executing ci. $2 50.

UNITED STATES OF AMERICA, *ss :*

The President of the United States to the judges of the circuit court of the United States, for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of

the judgment of a plea, which is in the said circuit court, before you, or some of you, between Thomas Hundley, plaintiff, and Benjamin G. Sims, defendant, a manifest error hath happened, to the great damage of the said Benjamin G. Sims, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the second Monday of January, in the [L. S.] year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the 67th.

W. H. BROWN,
Clk. circuit court U. S. so. dist. Missi.

Issued 8th day of June, A. D. 1843.
Filed, 8 Jan'y, 1844.